Riphah Journal of Islamic Thought & Civilization
Published by: Department of Islamic Studies,
Riphah International University, Islamabad
Email: editor.rjitc@riphah.edu.pk
Website: https://journals.riphah.edu.pk/index.php/jitc
ISSN (E): 3006-9041 (P): 2791-187X

Justice Beyond Uniformity: Equality, Moral Order and Feminist Readings of Islamic Family Law

Muhammad Rashid[1]

Abstract

Contemporary feminist critiques of Islamic family law frequently employ the concepts of equality and justice, often if justice requires identical rights and equal treatment for men and women. This article argues that such critiques are grounded in a liberal moral framework that equates justice with sameness, while overlooking the distinct ethical foundations of Islamic law. Through an examination of the anthropological and philosophical assumptions underlying feminist critiques, the study demonstrates that Islamic family law is based on a duty-oriented moral order in which justice is understood as proportionality, moral responsibility, and the equitable distribution of rights and obligations rather than uniformity. Focusing on the institutions of marriage (nikāḥ), guardianship (wilāyah), and male responsibility (qiwāmah), the article critically evaluates feminist assessments of these concepts and argues that they often apply external normative standards without engaging the internal moral logic of Islamic jurisprudence. The study concludes that meaningful dialogue on Islamic family law requires recognizing the differing conceptions of justice that inform liberal and Islamic legal traditions, rather than assuming that uniformity is the universal standard of justice.

Keywords: Islamic Family Law, Feminist Critique, Gender Justice, Qiwāmah, Islamic Jurisprudence

* Assistant Professor, Department of Islamic Studies, Shifa Tameer-e-Millat University, Islamabad.
Email: rashid.fssh@stmu.edu.pk
ORCID ID: https://orcid.org/0009-0009-0941-6524
DOI: https://doi.org/10.64768/rjitc.v4i1.2965

1. Introduction: Equality, Justice, and the Feminist Critique of Islamic Family Law

In contemporary debates on Islamic family law, many feminist critics argue that classical legal doctrines governing marriage (*nikāḥ*), male responsibility (*qiwāmah*), and guardianship (*wilāyah*) fail to realize gender equality by institutionalizing patriarchal authority. From this perspective, justice is understood primarily as the equal distribution of rights, roles, and legal capacities, making legal differentiation appear inherently unequal and therefore unjust.

Although these critiques arise from diverse intellectual traditions, they often share the assumption that justice is best achieved through legal symmetry between men and women. Consequently, differentiated legal norms are frequently evaluated as moral deficiencies rather than as features requiring ethical or jurisprudential analysis.

This article argues that the central disagreement between many feminist critiques and classical Islamic legal reasoning lies not merely in the interpretation of particular legal rules but in competing conceptions of justice and the moral anthropology on which those conceptions rest.

1.1 Equality as a Moral Principle Rather than a Legal Tool:

Equality is viewed as a foundational moral principle in much feminist legal theory, whereas in many other legal traditions it is viewed as a derivative legal mechanism. Justice is typically defined as the elimination of hierarchies and the creation of symmetrically distributed rights and capacities. Legal systems are evaluated on the basis of how effectively they eliminate differences that can produce unequal distributions of power between genders.[12]

[1] Okin, *Justice, Gender, and the Family*, 1–50, 75–110.

Since sameness (or near-sameness) in legal treatment is taken to be the most effective means of protecting individuals from domination, any form of asymmetry is commonly viewed as indicative of a moral bias embedded in legal traditions rather than as a legitimate form of contextual differentiation.[1] This view of equality, however, is not morally neutral. Instead, it is grounded in a very specific philosophical heritage tied to Enlightenment values including autonomy, individualism, and rights-based justice. Thus, when applied to Islamic law without modification, it risks conflating fundamentally different moral vocabularies into a single evaluative framework.

1.2 Feminist Critiques and the Charge of Injustice:

Critiques of Islamic family law by feminists are often based on identifying specific doctrines (for example, differential divorce rights, gendered financial responsibilities, and/or guardianship requirements) and evaluating them against an implicit ideal of uniform legal capacity. Where there is no similarity in legal capacity, injustice is assumed.[2]Some Muslim feminist scholars argue that doctrines identified as supporting or reflecting patriarchal norms are historically rather than ethically grounded in the Qurʾān and that the Qurʾān supports egalitarian interpretations. Therefore, they argue that classical jurisprudence was primarily concerned with social convention rather than justice and that reform is a process of recovering equality through reinterpretation or structural changes to the law.[31]

[1] Martha C. Nussbaum, *Women and Human Development: The Capabilities Approach* (Cambridge: Cambridge University Press, 2000), 72–74.
[2] Kecia Ali, *Marriage and Slavery in Early Islam* (Cambridge, MA: Harvard University Press, 2010), 105–7.
[3] Amina Wadud, *Qur'an and Woman: Rereading the Sacred Text from a Woman's Perspective* (New York: Oxford University Press, 1999), 45–47.
Mir-Hosseini, "Muslim Legal Tradition and the Challenge of Gender Equality," 15–50.

While these critiques identify important issues related to ethics, they rarely provide explicit justification for equating justice with sameness. Most often the underlying moral logic of Islamic law is not analyzed independently prior to rendering normative judgments.

1.3 Justice Beyond Sameness: An Examination of the Islamic Legal Paradigm

Islamic law views justice (ʿ*adl*) through a vastly different moral paradigm than does feminist legal theory. Rather than viewing justice as achieving sameness, classical jurists were able to conceptualize justice in terms of proportionality, balance, and the assignment of responsibilities in keeping with the purposes of justice and social order. Thus, the concept of justice in Islamic law was not necessarily based on sameness, but rather on the placement of things in their correct context (*waḍʿ al-shayʾ fīmaḥallih*).[2]

Therefore, legal differentiation within Islamic law is not inherently unjust. Differences are instead legitimized through reference to moral responsibility, functional role, and/or accountability, and not through assertions of inherent superiority. Rights do exist in Islamic law, but they exist as part of a larger duty-oriented moral order aimed at creating social cohesion and moral accountability before God.[3] When justice is limited to uniformity, this moral language is lost. The law is then assessed based on criteria that are outside the ethical underpinnings of the law, leading

[1] Ziba Mir-Hosseini, "Muslim Legal Tradition and the Challenge of Gender Equality," in *Men in Charge? Rethinking Authority in Muslim Legal Tradition*, ed. Ziba Mir-Hosseini and Karin Ask (Oxford: Oneworld, 2015), 12–15.

[2] Abū Ḥāmid al-Ghazālī, *Al-Mustaṣfā min ʿIlm al-Uṣūl* (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1993), 55–57.

[3] Wael B. Hallaq, *An Introduction to Islamic Law* (Cambridge: Cambridge University Press, 2009), 89–91.

to critiques of legal differentiation that incorrectly assume that differentiation is equivalent to discrimination.

1.4 Central Thesis and Contribution of Scholarship

This paper argues that feminist critiques of Islamic family law rest upon an implicit identification of justice with uniformity, thereby excluding the possibility that differentiated legal responsibilities may constitute a coherent and ethically defensible conception of justice. It contends that the central disagreement between feminist interpretations and classical Islamic legal reasoning is not merely over particular legal rulings but over competing conceptions of justice grounded in distinct moral anthropologies. Whereas feminist critiques are informed by an autonomy-centered moral framework, classical Islamic law is structured around responsibility, proportionality, and moral accountability. Rather than defending or rejecting specific legal doctrines, this paper reframes the debate at the level of moral theory, highlighting the limits of translating between divergent ethical paradigms and arguing for more internally grounded and ethically pluralistic forms of engagement.

Methodology:

This study adopts a qualitative and analytical research design grounded in normative theory and comparative moral analysis. Rather than focusing on empirical legal reform or sociological description, it examines the underlying moral assumptions that shape feminist critiques of Islamic family law and the normative reasoning within classical Islamic jurisprudence.

The analysis proceeds through three interconnected approaches. First, conceptual analysis is used to clarify how key concepts such as justice, equality, autonomy, obligation, and authority—are defined and applied within feminist legal theory and Islamic legal thought. This helps avoid conceptual ambiguity and reveals

implicit normative assumptions, particularly the tendency to equate justice with uniformity.

Second, the study employs a comparative moral–anthropological approach, drawing on Islamic jurisprudence (*usul al-fiqh*), moral philosophy, and feminist theory to compare the broader moral frameworks within which legal norms are constructed.

Third, the article uses internal normative critique, evaluating Islamic legal concepts such as *nikāḥ*, *wilāyah*, and *qiwāmah* in light of ethical principles embedded in the Islamic tradition, including justice (*'adl*), responsibility (*taklīf*), and moral accountability. Together, these approaches provide a conceptually clear framework for analyzing contemporary debates in Islamic family law and feminist legal theory.

2. Equality in Feminist Legal Theory: From Justice to Uniformity:

2.1 Equality as a central moral ideal in feminist critique

Mainstream feminist legal theory generally maintains that equality is a fundamental concept. Despite the diversity of feminist theories, feminist scholarship across all theoretical perspectives has regarded equality not merely as a legal concept, but as a moral standard used to evaluate social institutions. Therefore, equality is a central component of feminist critiques of family law. For feminists, justice requires the equal treatment of men and women in all aspects of law, economics and society. For feminists, inequality represents an imbalance of power. Therefore, legal differences based on sex are presumed to represent hierarchical, exclusionary or dominating relationships among men and women unless there is explicit justification by reference to the individual's choice or consent. Equality serves as both a descriptive diagnostic tool and a prescriptive moral goal to guide the interpretation and reform of

law.[1]

This commitment to equality provides the context for feminist critiques of Islamic family law. Feminists measure practices and doctrines of Islamic family law according to their conformity with the egalitarian ideals developed in modern liberal legal discourse.

2.2 From equality to sameness: The logic of uniformity

While feminist theory frequently distinguishes equality from identical treatment, many feminist legal critiques equate justice with uniformity. In practice, equality is operationalized as the elimination of differentiated legal roles, responsibilities, and authorities for men and women. Legal symmetry is used as the benchmark for moral legitimacy.

The shift from equality to sameness can be explained by a particular moral logic. Since two people who are morally equal have no basis for distinguishing their legal status or responsibility, any distinction is morally questionable. Therefore, asymmetry is considered prima facie evidence of injustice. The burden of proof lies with differentiated systems to justify themselves against the presumption of uniformity.[2]

In feminist critiques of religious legal systems, this logic is particularly evident. Legal distinctions are rarely interpreted functionally or by reference to responsibility, but are almost always seen as remaining elements of patriarchal social arrangements that contradict modern egalitarian values.

[1] Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (New York: Routledge, 1990), 20–22.

[2] Nussbaum, *Women and Human Development*, 72–74.

2.3 Autonomy and the moral basis of feminist equality

The equation of justice with uniformity is also related to the centrality of autonomy in feminist moral thinking. Feminist legal theory frequently defines justice in terms of protecting individual self-determination, free choice and independence from socially prescribed roles. Equality is meaningful in so far as it ensures the same degree of autonomy for all persons.

From this perspective of autonomy, differentiated legal roles are problematic since they appear to limit an individual's choices and prescribe life paths for them based on their sex. All authority structures, particularly in the family, are viewed as inherently coercive unless they are grounded in voluntary consent and reversible arrangements.[1]

Therefore, feminist critiques generally favor claims of right over claims of duty, and therefore evaluate justice by determining whether individuals have equal rights and freedoms, rather than by determining whether their moral responsibilities are proportionately distributed.

2.4 Asymmetry as a presumption of injustice

A significant characteristic of feminist legal critiques is the presumption that asymmetry represents injustice. Differentiated legal roles are not treated as morally neutral, but as deviations from what is justifiable. This presumption is a major factor in how feminist scholars interpret marriage, guardianship and family authority across cultures and religious contexts. Susan Moller Okin, for instance, has argued that justice in the family requires the abolition of gendered divisions of labor and authority, seeing such divisions as incompatible with liberal egalitarian principles.[2]Similar

[1] Carole Pateman, *The Sexual Contract* (Stanford, CA: Stanford University Press, 1988), 45–48.
[2] Susan Moller Okin, *Justice, Gender, and the Family* (New York: Basic Books, 1989), 16–18.

assumptions underlie feminist critiques of non-liberal legal systems, in which differentiated responsibilities are seen as structural inequalities rather than as ethically arranged duties.

This presumption often precludes other moral explanations for differentiated responsibilities, such as responsibility, protection, or moral accountability. Differentiated responsibilities grounded in moral accountability are, therefore, conceptually invisible, as justice is defined in advance as symmetry.

2.5 The universalization of a particular moral framework

Feminist critiques of Islamic family law often use the autonomy-centered conception of equality as a universal moral framework, presenting it as morally self-evident, rather than as historically and philosophically situated. Justice as uniformity is presented as a neutral standard, and alternative moral frameworks are portrayed as deviations from normative morality.

The universalization of this particular moral framework obscures the historical and philosophical context of the development of equality discourse in feminism, which was embedded in specific liberal traditions formed in part by Enlightenment individualism and modern conceptions of the self.[1]When applied uncritically to Islamic law, these assumptions risk confusing moral difference with moral deficiency. In such a way, the analysis of Islamic legal norms is often carried out without a thorough study of the anthropology of morality under which it is based. Equality is commonly assessed as an external measure given to the tradition in lieu of a notion that may be investigated in the framework of the ethical world of the tradition.

[1] Charles Taylor, *Sources of the Self: The Making of the Modern Identity* (Cambridge, MA: Harvard University Press, 1989), 101–4.

2.6 Equality as a moral result and not a moral process.

The other dimension of the feminist equality rhetoric is the emphasis on the results instead of the ethical mechanisms through which the results are produced. Justice is generally judged in terms of comparative legal standpoints and rights of persons, less regard being paid to the moral rationale that creates these. The system is defined as unjust in case the results seem unfair, irrespective of the internal system morality. This result-oriented method is radically different to the moral traditions that emphasize more on intention, responsibility, and accountability than on formal symmetry. In these kinds of traditions, justice can mean unequal commitments exactly so as to create a morally balanced and integrated society.[1]The absence of an explicit differentiation of equality as a point of arrival and justice as a moral procedure adds its share to feminist misunderstanding of the Islamic family law.

2.7 Summing up: Equality as uniformity and its extremes.

The critiques of feminism against the Islamic family law rest on an unexpressed identification of justice with uniformity. According to autonomy-based moral conceptualization of justice, the critique presupposes that the most direct path to defining the justice is to find out whether people possess equal rights and roles, and that any unequal relations are oppressive in nature. As previously demonstrated, this assumption is neither morally neutral nor universally valid. The premise of this chapter demonstrates that this premise represents a particular moral anthropology one that focuses on autonomy, choice, and sameness and that cannot be assumed to be a self-evident standard for judging all legal traditions. When compared with Islamic legal conceptions of justice, responsibility and moral order, which will be discussed in the next section, the implications of this framework become even more apparent.

[1] Alasdair MacIntyre, *Whose Justice? Which Rationality?* (Notre Dame, IN: University of Notre Dame Press, 1988), 130–32.

3. Justice in Islamic Legal Thought: Proportionality, Responsibility, and Moral Order

3.1 ʿ*Adl* as Moral Equilibrium Rather Than Formal Equality

In Islamic legal and ethical theory, justice is not about treating every individual equally and uniformly, but achieving moral balance through proportionality (ʿ*adl*). Throughout history, Muslim jurists have seen justice as restoring items (or people) to their appropriate place (*waḍʿ al-shayʾfīmaḥallihi*) in a moral universe, and not necessarily giving each person equal status or rights, duties, or roles.[1]

Justice is thus relational and has an end goal, striving for harmony within a particular moral universe, rather than abstractly symmetrical. This understanding of justice is starkly contrasted to the modern egalitarian framework of justice, where justice is measured by similarity. Islamic law recognizes that the same obligations can apply differently based on an individual's capacity, social role or responsibilities, and that differentiating one's obligations does not inherently demonstrate that there is injustice, but is a way to maintain moral equilibrium.[2]

3.2 Obligations before Rights: The Ethical Structure of Islamic Law

An important aspect of the Islamic legal structure is its duty-based ethical structure. Islamic law recognizes rights (*ḥuqūq*) in addition to recognizing obligations owed to God (*ḥuqūq Allāh*) and to fellow human beings (*ḥuqūq al-ʿibād)*.[3] The primary focus of Islamic legal evaluations is the extent to which the obligatory

[1]Al-Rāghib al-Iṣfahānī, *Al-Dharīʿah ilā Makārim al-Sharīʿah*, ed. Abū al-Yazīd al-ʿAjamī (Cairo: Dār al-Salām, 2007), 323–28.

[2]Mohammad Hashim Kamali, *Shari'ah Law: An Introduction* (Oxford: Oneworld, 2008), 161–71.

[3]Wael B. Hallaq, *Sharīʿa: Theory, Practice, Transformations* (Cambridge: Cambridge University Press, 2009), 317–30.

duties (*wajibāt*) are fulfilled, rather than simply protecting individual claims.[1] The obligation as a priority shows that humans are regarded as morally responsible (*mukallafun*) and are able to achieve their moral value through their deeds. Therefore, although justice encompasses the allocation of entitlements (rights), it encompasses the accomplishment of the compulsory duties as much as possible depending on the ability of an individual. Thus, though each may have equal rights, justice may not be fostered since one cannot comply with an option that is outside his/her ability.[2]

3.3 Legal Justice as a philosophical matter of Moral Responsibility.

The Islamic law makes justice under the umbrella of moral accountability in front of God. Legal rules do not stand self-legitimate; they only gain legitimacy as a moral responsibility guide. The focal point of justice is accountability (*masʾūliyyah*). Those who bear higher responsibilities are expected to have a higher measure of moral accountability and liability can be a bigger liability.[3]This responsibility-based system is the reason as to why the Islamic law tends to give different burdens as opposed to giving equal rights. Justice is created when the responsibility of an individual is in line with the capacity and functional ability and not when everyone is treated. Finally, the law is not about abstract equality but rather about keeping moral coherence and consequences of ethical actions.

3.4 Proportionality, Context and the Preservation of Moral Order.

The reasoning of Islamic law is highly situational and depends on the ability of a person and the outcomes of his or her behavior. The principles generated by jurists include the beneficence of the people (*maşlaah),* avoiding harm (*darʾ al-mafāsid*), and

[1] Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (Cambridge: Islamic Texts Society, 2003), 56–70.

[2] Abū Isḥāq al-Shāṭibī, *Al-Muwāfaqāt fī Uṣūl al-Sharīʿah*, ed. ʿAbd Allāh Darrāz (Cairo: Dār Ibn ʿAffān, 1997), 1:246–70.

[3] Wael B. Hallaq, *The Impossible State: Islam, Politics, and Modernity's Moral Predicament* (New York: Columbia University Press, 2013), 23–40.

legal maxims which are supposed to be used to influence the application of the law flexibly in terms of proportionality.[1] The tools help the pursuit of justice on a dynamic platform without necessarily translating to a strict, inflexible application of the law. Justice according to the Islamic law is aimed at maintaining and safeguarding moral and social order (*niẓam*) rather than the elimination of dissimilarity between people. Forcing the same uniformity and not taking into account the situation of the person, his or her abilities, and duties can lead to new injustices and a violation of the moral order. For this reason, Islamic law rejects reducing justice to mere symmetry, and instead seeks to achieve proportionality based on moral purposes (*maqāṣid*).

3.5 Implications for Evaluating Islamic Law through a Feminist Lens

Feminist critiques of Islamic legal norms that measure justice using a standard of uniformity will likely misunderstand the underlying moral structure of the tradition. Differentiation in the law will be misinterpreted as discriminatory treatment and proportionality will be misconstrued as hierarchical. As a result of the dissonance between the two evaluative frameworks, feminist critiques will likely address a concept of justice that is fundamentally at odds with the conceptualizations of justice inherent in Islamic law.[2]

Recognizing that justice in Islamic law is based on moral proportionality rather than sameness is necessary for engaging with Islamic law on any meaningful level. Absent this recognition, critiques of Islamic law will continue to be made from an external perspective, evaluating Islamic law according to assumptions that Islamic law was never designed to meet.

[1] Jasser Auda, *Maqāṣid al-Sharīʿah as Philosophy of Islamic Law: A Systems Approach* (London: International Institute of Islamic Thought, 2008), 78–95.
[2] Hallaq, *An Introduction to Islamic Law*, 50–85, 120–50.

4. Marriage (*Nikāḥ*) and the Critique of Gender Differentiation

4.1 Feminist Readings of *Nikāḥ* as a Contract of Inequality

In Muslim feminist analyses of Islamic family law, Nikah is typically described as a contractual mechanism where male interests will be given preference to those of females. Critiques based on liberal contract theory define marriage as an equalitarian reciprocal contract between two autonomous individuals. Legitimacy of a contract is dependent on both parties having equal rights and responsibilities; thus if there is any inequality in rights and/or responsibilities within a marriage, it can be assumed to be unjust.[1]

Many Muslim feminists contend that the construction of Nikah found in classical jurisprudence reflects patriarchal societal norms as opposed to ethical obligations established by the Quran. The use of language related to exchange – especially language that links mutual obligations of spouses with sexual submission or obedience – has been used to illustrate how marriage has been reduced to a transactional relationship rather than a relational one.[2] Therefore, Nikah is criticized for being a system of hierarchical relationships as opposed to mutually supportive ones.

4.2 Mahr, Divorce, and the Expectation of Reciprocal Treatment

Mahr is another area of contention in the criticism of gender in Islam. Many feminist interpretations view mahr as payment for male sexual access to women's bodies, and as further exemplifying a commodification of marriage. Furthermore, many feminists point out that the differential methods of divorce available to men and

[1] Okin, *Justice, Gender, and the Family*, 16–18.

[2] Kecia Ali, *Sexual Ethics and Islam: Feminist Reflections on Qur'an, Hadith, and Jurisprudence* (Oxford: Oneworld, 2006), 55–90.

women (*ṭalāq* for men, and *khulʿ* or judicial dissolution for women) indicate that Islamic law provides greater authority to males than to females.[1]

Using an equality-as-identity framework, justice is defined as requiring equal marital powers and equal rights of departure. Thus, any differences in marital powers and exit rights would be considered a violation of reciprocity. Consequently, many feminist reform proposals recommend transforming Nikah into a completely symmetrical contract, where marital authority, financial responsibility, and right to divorce would be divided equally among spouses.[2]

However, these criticisms of Nikah imply that justice in a relationship requires the same treatment for both partners. However, they do not examine sufficiently whether Islamic law views marital justice in terms of equivalent authority, or whether it views justice through a different moral framework.

4.3 Uniformity vs. Functional Differentiation

Islamic law views marriage not as a relationship between two abstract individuals, but as a moral institution that exists within a larger moral community. Within this framework, the legal differentiation of roles within Nikah is based on role-based responsibilities as opposed to inherent value. For instance, *nafaqah* (financial support of spouse) is legally required of men but not of women, producing an asymmetry in financial obligation that is based on economic obligation rather than privilege.[3]

Within this framework, justice does not require equal marital duties, but rather, just and equitable distribution of duties based on ability and social function. Therefore, when the feminist criticism of Nikah is assessed only based on the uniformity

[1] Ali, *Marriage and Slavery in Early Islam*, 112–50, 190–220.
[2] Mir-Hosseini, *Islam and Gender*, 23–60, 101–35.
[3] Kamali, *Principles of Islamic Jurisprudence*, 200–45.

standards, it is possible that they will assess functional differentiation as injustice. The fact that the historical practice of Nikah has always been based on moral ideals is not an absolute truth. In the past, the classical jurists were aware that customary practices, power relations, and social circumstances, all influenced the application of law. However, analyses of marital relationships in the Islamic law are determined based on the agreement to moral responsibility and moral purpose rather than the level of symmetry.[1]

4.4 Marriage as Moral Institution rather than Relationship based on Contractual Rights.

The greatest divergence of the readings of the Nikah as put forward by the feminist and the Islamic views is in the moral anthropology behind the two sides. Feminist critiques of Nikah refer to the significance of someone being free in his/her actions and the equal treatment in contractual agreements, the Islamic law treats Nikah in the context of moral community where there is a sense of duty, moral discipline and accountability to Allah.[2] The moral structure of Nikah can be targeted only by considering it in terms of equality and uniformity, making the contractual relations of rights that do not relate to this moral purpose. Consequently, the ensuing criticism concerns an Islamic law concept of marriage such as the one that is not unconditionally supported by the Islamic law. This misconception is the reason why the debate about marriage reform is rather divisive than explanatory. By seeing Nikah as a moral institution, which is exposed to various, but related responsibilities, the critique of Nikah without turned justice to identity becomes possible. Furthermore, according to this point of view, most of the feminist arguments against Nikah are not

[1] Hallaq, *An Introduction to Islamic Law*, 50–85, 120–60.

[2]Kecia Ali, *Marriage and Slavery in Early Islam* (Cambridge, MA: Harvard University Press, 2010), 1–20.

founded on the specifics of the legal stipulations, but on the basis of a difference of opinion regarding the demands of marital justice itself.

5. Guardianship (*Wilāyah*) and the Problem of Legal Agency

5.1 Feminist Claims of Diminished Autonomy

Within feminist critiques of Islamic family law, *wilāyah* especially in its form of marriage guardianship has become one of the most contentious institutions among critics. Many feminist scholars argue that *wilāyah* limits the legal agency of women, since their marital choices are subject to the authority of a male guardian. In this view, legal guardianship is seen as a legal tool to treat adult women as dependents instead of as fully autonomous moral beings.[1]

In the framework of many feminist views of autonomy, legal agency is closely associated with individual choice and self determination. Thus, any legal structure that limits a woman's ability to enter into a contract for marriage based on the approval of someone else is seen as being incompatible with justice (Okin, 1989). Feminist interpretations often position *wilāyah* as a symbolically and practically reflective of the lack of trust in the rational and moral capabilities of women, thereby representing an inconsistent relationship between a woman's moral status and her legal capacity.

These arguments are further supported by appeals to Qur'anic concepts of moral accountability (*taklīf*) which affirm women as equally accountable to God. Therefore, feminist scholars argue that if women are equally accountable before God, then any legal requirement of guardianship represents an unjust contradiction between a woman's moral status and her legal capacity.[2]

[1] Nussbaum, *Women and Human Development*, 45–78, 112–45.
[2] Wadud, *Qur'an and Woman*, 60–95, 150–80.

5.2 Moral Protection vs. Legal Incapacity

Islamic legal theory, however, does not see *wilāyah* as a direct reflection of women's moral or rational capability. Rather, classical jurists saw the legal structure of guardianship as a means to protect certain interests within a socially embedded moral order. Therefore, the inclusion of a guardian was not intended to negate a woman's moral agency, but to regulate the process of entering into a contract in consideration of social vulnerability, familial obligations and potential harm.
It is also important to note that the existence of differing juridical opinions regarding *wilāyah* indicates that the institution of guardianship was never viewed as an absolute or ontological statement regarding female incapacities. For example, schools of law, such as the *Ḥanafī* school, have legitimized the legal validity of a woman independently contracting her own marriage, and therefore indicate that the application of guardianship was contextualized and not universal.

Therefore, the pluralism existing in the application of the institution of guardianship undermines feminist claims that *wilāyah* represents a monolithic doctrine of female dependency.
From the standpoint of Islamic legal reasoning, the function of guardianship reflects a moral concern for protecting (*ḥifẓ*) rather than controlling. The role of the guardian is defined in terms of a responsibility, as well as in terms of the limitations of ethics, not as an arbitrary power exercised at will. The abuse of the authority of a guardian has been explicitly forbidden by jurists, and judicial intervention has been permitted where a guardian acts unjustly.[1]

[1]Alāʾ al-Dīn al-Kāsānī, *Badāʾiʿ al-Ṣanāʾiʿ fī Tartīb al-Sharāʾiʿ*, 10 vols. (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1986), 2:247–55

5.3 Context, Responsibility, and Authority

Feminist critiques of wilaya often presuppose that equal legal ability of the sexes is needed. The justice, in contrast, is evaluated by the Islamic law according to the responsibility, contexts and the moral purposes. Laws are not necessarily an indicator of inequality, but may be enforceable in the case when they are a means to certain moral ends, including protection, social justice, and responsibility. The moral responsibility and liability are linked to the authority in the Islamic law. The guardian is morally responsible of the abuse of his power and the legality of his acts are evaluated based on the duty and not right but a right. When the concept of guardianship is put into the context of autonomy-based theory, the ethical pressure on the guardian is usually put aside, and the power is reduced to the power of domination.[1]The historical conflicts over wilayah are a basic schism in moral anthropology. Those who criticize feminism suppose legal agency to be legitimate because it is the same as justice, but Islam approach to the law considers agency to operate within a complicated network of moral obligations. Consequently, criticisms of guardianship might, unperceiving this difference, be an erroneous attempt to describe a duty-oriented legal institution as an autonomy-denying one.

6. *Qiwāmah* and the Misreading of Responsibility as Privilege

6.1 Feminist Readings of *Qiwāmah* as Gendered Authority

The most sustained feminist criticisms of the doctrines of the Islamic family law have possibly been criticisms of *qiwmah*. To construct the context related to *qiwmah*, which is based predominantly on Quran 4: 34, feminist academics tend to interpret it as an argument in favor of man dominance over women and creation of

[1] Kamali, *Principles of Islamic Jurisprudence*, 200–45.

gender-related hierarchies within the family.[1] Inequality-as-Uniformity models, in their turn, interpret distribution of various types of responsibility as a means that gives men a higher moral and legal status than women, therefore, a breach of gender justice. By making the interpretation of this, the feminists assume that authority is necessarily domination, and thus that all sorts of differential responsibility, can only be interpreted in terms of expressing the symbolic importance of that power, and not on the terms of whether it functions and is ethically justified according to the Islamic moral theory.

6.2 *Qiwāmah* as Economic and Moral Obligation in Islamic Law

Classical Islamic legal thought conceives of *qiwāmah* as an obligatory right, based on the individual's ability to provide economic support (*nafaqah*) and protect others, and to be held publicly accountable for their actions. Jurists have continually emphasized that authority is conditional upon fulfilling specific duties and not merely the right to control.[2]

Thus, the obligation-oriented approach to *qiwāmah* reverses the feminist notion that *qiwāmah* provides individuals with unearned power. Rather, the exercise of *qiwāmah* obligates the person who exercises it to take greater moral and legal risks. Therefore, if an individual fails to discharge their duties, they are undermining the legitimacy of their *qiwāmah*, and authority without responsibility is seen as null in classical Jurisprudence.[3]

6.3 Responsibility, Moral Risk, and Ethical Accountability

Islamic legal ethics sees responsibility as a place of moral risk rather than advantage. Individuals who bear *qiwāmah* are placed at greater risk of being held

[1] Asma Barlas, *"Believing Women" in Islam: Unreading Patriarchal Interpretations of the Qur'an* (Austin: University of Texas Press, 2002), 30–75, 100–30.

[2] Ali, *Marriage and Slavery in Early Islam*, 112–50.

[3] Mohammad Hashim Kamali, *Shari'ah Law: An Introduction* (Oxford: Oneworld, 2008), 134–71.

accountable by both God and other humans. Consequently, having *qiwāmah* places an individual at greater risk of being found guilty of failing to meet their obligations and being punished accordingly. This view is incompatible with the feminist view that authority is beneficial to those who possess it and that autonomy equals moral success.[1] In Islamic moral anthropology, assuming responsibility is morally burdensome and spiritually hazardous.

Therefore, the relevant issue is not who has authority, but who will be accountable to God.

6.4 Why Uniformity Misrepresents the Ethical Significance of *Qiwāmah*

Assessing *qiwāmah* through the prism of uniformity implies that justice demands that all people perform similar roles, have equal obligations and responsibilities, and are treated equally. Under such a model, differences in functional obligations are viewed as inherently unjust and therefore problematic. However, Islamic legal thinking does not identify justice with sameness, but with proportionality it allocates obligations and responsibilities in accordance with the capacity, function, and moral purpose of the individual.[2] Therefore, when *qiwāmah* is evaluated through the lens of a model that prioritizes similarity and ignores responsibility, the ethical rationality of *qiwāmah* cannot be understood. What appears to be a privilege to some under an autonomy-based paradigm is, in fact, an obligation under a duty-based paradigm. It is therefore not surprising that a systemic misunderstanding of Islamic legal norms arises from the failure to recognize and understand the different moral paradigms.

[1] Wael B. Hallaq, *Sharīʿa: Theory, Practice, Transformations* (Cambridge: Cambridge University Press, 2009), 317–30.

[2] Auda, *Maqāṣid al-Sharīʿah as Philosophy of Islamic Law*, 50–90.

6.5 *Qiwāmah* and the Issue of Evaluating Standards

The ongoing controversy surrounding *qiwāmah* exemplifies the broader limitations of feminist critique when evaluating justice through a uniformity paradigm. By and large, feminist critiques rely on the premise that the elimination of differing responsibilities is essential to achieving moral legitimacy. In contrast, Islamic law evaluates moral legitimacy through an assessment of whether an individual has fulfilled their obligation and assumed accountability for their actions. Although this difference does not mean that *qiwāmah* is incapable of being critically examined, it does indicate that critical examinations of *qiwāmah* should occur within an internal paradigmi.e., determining whether the doctrine serves the intended moral purpose, rather than using external standards that reject the fundamental premises of the doctrine.Without recognizing this normative difference, feminist critiques may result in reducing disagreements about morality into condemnations of morality.

7. The Limits of Translating Justice Across Moral Frameworks

7.1 Why Feminist Critiques and Islamic Law Often Talk Past One Another

The most common complaint from feminists critiquing Islamic family law is that they judge Islamic legal norms based on a conception of justice rooted in liberal moral philosophy and claim those judgments are universal. This use of methodology leads to Islamic law being judged based on criteria not part of the same moral architecture as Islamic law and to little recognition of that externality. Therefore, when critics apply Islamic legal concepts like *'adl* (justice), *huquq* (rights) and *wajib* (obligation), they interpret them through an ethical grammar that places a priority on autonomy, symmetry and individual choice. Therefore, when Islamic law does not meet these expectations, it is seen as morally lacking instead of being morally

different. The disagreement then is not just about the outcome but also about the standard used to make a moral assessment.

That's why there is so much impasse in debates regarding nikah, wilayah and *qiwamah*. Both sides are operating under a completely different moral structure yet, the criteria of one side is being treated as normative for both.

7.2 External Critique, Internal Critique and Conceptual Slippage

There is a very important distinction to be made between an external critique and an internal critique. An external critique uses normative standards to assess a tradition that originate outside of that tradition. On the other hand, an internal critique assesses the practices and interpretations of a tradition using the moral principles, purposes and commitments inherent in the tradition itself. Many current feminist engagements with Islamic law fall somewhere in-between these two methodologies. While claiming to reform Islamic law from the inside out, many of these critiques rely on liberal feminist ethics that are not based in Islamic legal theory. This leads to conceptual slipping. The criticisms appear to be internalized in the Islamic law but are in the real sense externalized. There are mechanisms of criticism of Islamic legal theory, such as appeals to higher objectives of the law (*maqasid* al-shariah), social good (*maslahah*), and moral purpose. Nevertheless, the Islamic legal theory does not reduce justice to uniformity and it does not suppose that all the types of asymmetry are unjust in nature. The reformist arguments will cease to have intellectual coherence in case they are ambiguous about what kind of critique they are using.[1]

[1] Hallaq, *An Introduction to Islamic Law*, 50–85, 120–50.

7.3 Moral Incommensurability and the Problem of Translation

The issue of interpreting justice between the morality of feminism and Islamic law brings out a great level of moral incommensurability. That moral incommurability does not mean that the tradition of a particular society is irrational, or that its tradition cannot be criticized, but that its basic values are organized in a way which cannot be easily superimposed on other systems. Liberal feminist ethics is closely related to justice because it involves the idea of equal autonomy and reduced structural differentiation. Justice according to Islamic law is intertwined with moral order, proportions of duties and responsibility before God. These frameworks, therefore, pose various moral questions, as well as, value various ethical goods. In cases where justice is transferred to a different framework without acknowledging the difference, it is bound to be misinterpreted. The structural differentiation turns into domination; compulsion turns to coercion; power turns to advantage. Islamic law is evaluated using the moral reasoning that was not designed to understand it.[1]

7.4 Moving towards Methodological Clarity and Ethical pluralism.

The acknowledgement of the drawbacks of normative translation does not exclude feminist issues or ethical judgment suspension. Instead it requires a methodological clarity. Critics should specify that they are giving an internal Islamic critique, which is based on Islamic moral reasoning, or external critique, which is based on liberal feminist norms. Transparency in practice would provide more honest and fruitful communication. It would also specifically form an area of ethical pluralism, where various traditions of morality are recognized as giving consistent but different explanations of justice. Ethical pluralism does not define that there should be no disagreement, but only that disagreements be pursued in clear normative

[1] MacIntyre, *Whose Justice? Which Rationality?*, 100–45.

terms.[1]Without methodological clarity in place, the Islamic family law debates will further confound moral differing with moral failures and reform will still be judged by its proximity to liberal ideals and not its acceptability to ethical coherence.

8. Conclusion

This paper has argued that many feminist critiques of Islamic family law rest on an implicit moral assumption that justice requires identical rights, roles, and legal outcomes for men and women. Consequently, legal differentiation is often treated as prima facie evidence of inequality and injustice. By contrast, classical Islamic jurisprudence understands justice (*ʿadl*) not as uniformity but as proportionality grounded in moral responsibility, reciprocal obligations, and accountability before God. Within this framework, institutions such as *nikāḥ*, *wilāyah*, and *qiwāmah* derive their legitimacy from a duty-based moral order in which authority is inseparable from responsibility rather than privilege.

The paper further contends that the principal disagreement between many feminist interpretations and the Islamic legal tradition is not primarily over specific legal rules but over competing conceptions of justice and the moral anthropology that underpins them. Recognizing this distinction clarifies the difference between internal critiques grounded in the normative framework of Islamic law and external critiques based on alternative moral paradigms. Such conceptual clarity neither precludes ethical criticism nor forecloses legal reform; rather, it provides the necessary conditions for a more rigorous and constructive dialogue. Only by engaging Islamic law on its own moral terms can meaningful conversation move beyond conceptual misunderstanding toward genuine scholarly exchange.

[1] Taylor, *Sources of the Self*, 30–65, 120–60.

Bibliography

Ali, Kecia. *Marriage and Slavery in Early Islam*. Cambridge, MA: Harvard University Press, 2010.

Ali, Kecia. *Sexual Ethics and Islam: Feminist Reflections on Qur'an, Hadith, and Jurisprudence*. Oxford: Oneworld, 2006.

Al-Ghazālī, AbūḤāmid Muḥammad ibn Muḥammad. *Iḥyāʾ ʿUlūm al-Dīn*. Beirut: Dār al-Maʿrifah, n.d.

Al-Ghazālī, AbūḤāmid Muḥammad ibn Muḥammad. *Al-Mustaṣfā min ʿIlm al-Uṣūl*. Edited by MuḥammadʿAbd al-SalāmʿAbd al-Shāfī. Beirut: Dār al-Kutub al-ʿIlmiyyah, 1993.

Hallaq, Wael B. *An Introduction to Islamic Law*. Cambridge: Cambridge University Press, 2009.

Hallaq, Wael B. *Sharīʿa: Theory, Practice, Transformations*. Cambridge: Cambridge University Press, 2009.

Hallaq, Wael B. *The Impossible State: Islam, Politics, and Modernity's Moral Predicament*. New York: Columbia University Press, 2013.

Kamali, Mohammad Hashim. *Principles of Islamic Jurisprudence*. 3rd ed. Cambridge: Islamic Texts Society, 2003.

Kamali, Mohammad Hashim. *Shari'ah Law: An Introduction*. Oxford: Oneworld, 2008.

Mir-Hosseini, Ziba. *Islam and Gender: The Religious Debate in Contemporary Iran*. Princeton, NJ: Princeton University Press, 1999.

Mir-Hosseini, Ziba. "Muslim Legal Tradition and the Challenge of Gender Equality." In *Men in Charge? Rethinking Authority in Muslim Legal Tradition*, edited by Ziba Mir-Hosseini and Karin Ask, 12–50. Oxford: Oneworld, 2015.